

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil R. No.4152 of 1993.

Date of Decision:29.11.2006

Yusuf

....Petitioner.

Versus

Jagmal and others.

...Respondents.

CORAM : Hon'ble Mr.Justice S.S.Saron.

Present:- Mr. Sanjay Vij, Advocate
for the petitioner.
None for the respondents.

S.S.SARON, J.(ORAL)

This Civil Revision Petition under Section 115 of the Code of Civil Procedure ('CPC' for short) has been filed against the order dated 17.9.1993 passed by learned Addl. Senior Sub Judge, Ferozepur Jhirka, whereby the application filed by the defendants/respondents for setting aside the ex-parte judgment and decree dated 14.6.1990 has been accepted subject to payment of costs of Rs.300/-.

The suit out of which the present petition arises was filed by the plaintiffs/petitioners seeking declaration with respect to the suit property along with permanent injunction. The suit was filed on 22.5.1990 and was fixed for 31.5.1990. On the adjourned date 31.5.1990 Sh.Akhtar Hussain, Advocate, appeared on behalf of the defendants and sought adjournment for filing written statement. The case was adjourned for 4.6.1990, on which date it was again adjourned to 11.6.1990, for the purpose of filing written

statement. On 11.6.1990 the case was again adjourned to 12.6.1990 on which date neither the defendants nor their counsel appeared in court. As such, they were ordered to be proceeded against ex-parte. The suit of the plaintiffs/petitioners was decreed ex-parte in their favour on 14.6.1990. On the same date i.e. 14.6.1990 the defendants submitted an application for setting aside the ex-parte decree. This application has been allowed vide the impugned order and the same is assailed by way of the present revision petition.

Mr. Sanjay Vij, Advocate, learned counsel appearing for the petitioner has contended that in fact the defendants were all along aware of the proceedings of the case. It is further submitted that the defendants/respondents were intentionally avoiding their appearance in Court. Besides, it is contended that their conduct is such that they were not entitled to the restoration of the suit or the setting aside of the decree that had been passed in favour of the plaintiffs/petitioners.

I have given my thoughtful consideration to the matter. It is appropriate to note that the suit was initially filed on 22.5.1990 and the defendants through their counsel Sh.Akhtar Hussain, had put in appearance on 31.5.1990. Thereafter, time was taken for filing written statement for 4.6.1990, 11.6.1990 and 12.6.1990. On the last date i.e. 12.6.1990 neither the defendants nor their counsel appeared. Accordingly, they were proceeded against ex-parte. Sh.Akhtar Hussain, Advocate had appeared as AW1. He deposed that he appeared as an Advocate on behalf of the defendants on 31.5.1990 and the case was adjourned to 4.6.1990 for filing

written statement. However, he informed the date to the defendants as 16.8.1990. Sardar Khan, AW2, has also stated that on 4.6.1990, his counsel Sh.Akhtar Hussain, Advocate had informed him the next date of the case as 16.8.1990. It is further stated that on 14.6.1990 when the plaintiffs were coming to the court, they also came behind them and when they reached the court they came to know that they had been proceeded against ex-parte and on the same day the ex-parte orders were passed. The stand taken by the plaintiffs/petitioners that Sh.Akhtar Hussain, Advocate, had stated before the court that he had no instructions to appear in the case has not been accepted by the learned Trial Court. It has been observed that there is no indication that the learned counsel for the defendants had made a statement regarding his having no instructions. Accordingly, the said plea of the plaintiffs/petitioners was not accepted. It was rather observed that the application for setting aside the ex-parte judgment and decree had been moved without delay on 14.6.1990 itself. The applicants, it was observed cannot be allowed to suffer due to the act of the counsel for which the opposite party can be compensated with costs.

In the circumstances it may appropriately be noticed that the defendants/respondents have showed sufficient cause for setting aside the ex-parte judgment and decree dated 14.6.1990. The sufficient cause having been accepted by the learned Trial court would not warrant interference in exercise of the revisional jurisdiction of this Court under Section 115 of the CPC. The scope of revisional jurisdiction is limited. **In M.L.Sethi Vs. R.P.Kapur,** AIR 1972 SC 2379, it was held that the jurisdiction of the High Court under Section 115 CPC is a limited one. The section is not

directed against the conclusions of law or fact in which the question of jurisdiction is not involved. Section 115 empowers the High Court to satisfy itself on three matters:(a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the Court ought to exercise jurisdiction; and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. And if the High Court is satisfied on these three matters it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection. An erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdictions of that court, cannot be corrected by the High Court under Section 115. The learned Executing Court, therefore, having exercised of its jurisdiction in restoring the suit and setting aside the ex-parte judgment and decree would not warrant any interference by this Court.

For the fore-going reasons the revision petition is dismissed.

However, the parties through their counsel shall put in appearance before the learned Trial Court on 31.1.2007. Since, the revision petition has been pending in this Court for a considerable time it is hoped that the Trial Court

shall take effective steps to dispose of the case as expeditiously as possible. The Trial Court shall also issue notices to the defendants for securing their presence in case they do not appear on 31.1.2007. The petitioners may also implead the LRs of defendants No.1,7, and 10 who have reportedly died.

November 29,2006.
reema.

(S.S.SARON)
JUDGE